

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

THE GAS COMPANY, LLC,
HGC HOLDINGS, LLC,
K1 VENTURES LIMITED, and
MACQUARIE GAS HOLDINGS LLC

DOCKET NO. 05-0242

For Approval of the Transfer of
Upstream Membership Interests and
Related Matters.

ORDER NO. 23293

RECEIVED
2007 MAR 14 A 9:00
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed March 13, 2007
At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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ORDER

By this Order, the commission: (1) authorizes THE GAS COMPANY, LLC ("TGC") to donate to local charities the remaining credit balance of \$17,156 of the \$4.1 million in customer appreciation bill credits mandated by Stipulated Regulatory Condition No. 14, subject to certain requirements established herein; and (2) finds that TGC's adherence to the requirements set forth in this Order would result in TGC having fully complied with Stipulated Regulatory Condition No. 14.

I.

Stipulated Regulatory Condition No. 14

On May 3, 2006, the commission issued Decision and Order No. 22449 in this docket ("Decision and Order No. 22449"), conditionally approving the transfer of upstream membership interests and related matters ("Proposed Transfer") described in the joint application filed by TGC; HGC HOLDINGS, LLC; k1 VENTURES LIMITED; and MACQUARIE GAS HOLDINGS LLC

(collectively, "Applicants") on October 17, 2005.¹ One of the regulatory conditions² imposed on the Applicants required the following³:

TGC shall provide a customer appreciation bill credit, as hereinafter provided, to each regulated firm gas customer of TGC as of the date of closing of the proposed transfer of control who has remained a customer of TGC through the date of said credit, and the aggregate amount of all such credits shall equal \$4.1 million in non-fuel base rate revenues. This billing credit shall be applied to each non-delinquent (current or having a past due balance of less than 60 days) utility firm gas customer account, by calculating an estimated per therm amount to be applied to each customer's respective usage amounts for the second billing period after closing of the proposed Transfer of Control, with a corresponding true-up adjustment in the per therm credits in a subsequent billing month as necessary so that the aggregate amount of all credits totals \$4.1 million. The credits shall be completed no later than the end of the fifth full calendar month following the closing of the transfer of control. Notwithstanding anything to the contrary set forth in this Condition, in no event shall TGC be required to provide credits in excess of \$4.1 million. All customer bill credits are to be presented to TGC's applicable customers in a form mutually acceptable to the Consumer Advocate and TGC. TGC shall prepare and submit to the PUC and Consumer Advocate a report of all amounts credited to customers by billing cycle date pursuant to this paragraph within 60 days following the completion of said credits.

¹The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62. Applicants and the Consumer Advocate are hereafter collectively referred to as the "Parties."

²During the course of this proceeding, Applicants and the Consumer Advocate negotiated and agreed upon fourteen regulatory conditions, which became known collectively as the Stipulated Regulatory Conditions. The commission conditioned its approval of the Proposed Transfer upon Applicants' adherence to and compliance with, among other things, the Stipulated Regulatory Conditions. See Decision and Order No. 22449 at 35.

³Id. at 15-16.

The regulatory condition set forth above is hereafter referred to as "Stipulated Regulatory Condition No. 14."

By letter dated and filed on November 30, 2006, TGC reports that it substantially completed providing its non-delinquent utility customers bill credits totaling \$4,082,844, in the aggregate, in compliance with Stipulated Regulatory Condition No. 14 ("Letter Request")⁴. It reports that while the total credit issued to non-delinquent customers falls \$17,156 short of the stipulated \$4.1 million amount, TGC believes that it has substantially complied with the regulatory condition. TGC states that expenses for any further true-up would outweigh the value of the remaining credit balance and, thus, it proposes to make donations totaling \$17,156 to local charities, with the commission's approval ("Proposed Donation"), and upon completion, report back to the commission. TGC requests that the commission: (1) allow it to proceed with the Proposed Donation; and (2) find that TGC has fully complied with Stipulated Regulatory Condition No. 14.

Here, it appears that, under the circumstances described, TGC's Proposed Donation is reasonable. TGC appears to have substantially complied with Stipulated Regulatory Condition No. 14 by issuing its non-delinquent utility customers credits reportedly totaling \$4,082,844 in the aggregate. According to TGC, any additional true-up of the remainder of the funds would outweigh the value of the remaining credit balance. Thus, the

⁴The Consumer Advocate was served a copy of TGC's Letter Request on November 30, 2006. To date, the Consumer Advocate has not submitted written comments on the contents of the Letter Request.

commission finds TGC's Proposed Donation to be an appropriate and practical method of addressing the remainder of the credit balance. However, since this regulatory condition arose during negotiations with the Consumer Advocate, the commission finds it reasonable to require TGC to consult with the Consumer Advocate in selecting the "local charities" that will receive the Proposed Donation.⁵ Additionally, within 45 days of distributing the donations, TGC should provide the commission with a detailed report setting forth, at minimum, the name of the local charities selected and the amounts donated to each entity, and provide a copy of the same to the Consumer Advocate. Provided TGC complies with the above conditions, TGC will be in full compliance with Stipulated Regulatory Condition No. 14.

Based on the above, the commission concludes that TGC's Proposed Donation should be approved, subject to the requirements set forth above. The commission also concludes that TGC's adherence to the requirements regarding the Proposed Donation set forth in this Order would result in TGC having fully complied with Stipulated Regulatory Condition No. 14.

⁵This requirement is similar to one imposed by the commission in a prior utility transfer proceeding involving a regulatory condition also concerning customer credits. See In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005, at 32.

II.

Orders

THE COMMISSION ORDERS:

1. The Proposed Donation, as described in TGC's Letter Request, is approved; subject to the requirements set forth below.

2. TGC shall consult the Consumer Advocate in selecting the "local charities" that will receive the Proposed Donation.

3. Within forty five days of distributing the Proposed Donation, TGC shall file a detailed report setting forth, at minimum, the name of the local charities selected and the amounts donated to each entity with the commission, and serve a copy of the same on the Consumer Advocate.

4. Provided TGC complies with the above conditions, TGC is deemed to have fully complied with Stipulated Regulatory Condition No. 14.

DONE at Honolulu, Hawaii MAR 13 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

J. Sook Kim
J. Sook Kim
Commission Counsel

05-0242.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23293 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAR 13 2007